



Before the Department of Homeland Security

U.S. Customs and Border Protection

Mandatory Advance Electronic
Information for International
Mail Shipments

Docket No. USCBP-2021-0009

Comments of the Lexington Institute
(May 14, 2021)

The Lexington Institute provides the following comments and information for U.S. Customs and Border Protection (CBP) in conjunction with the interim final rule (IFR) for Mandatory Advance Electronic Information for International Mail Shipments.

Since 2017, the Lexington Institute has consistently analyzed and discussed the importance of keeping illegal opioids from entering the United States via the international mail system. The bipartisan *Synthetics Trafficking & Overdose Prevention (STOP) Act* is an essential tool for confronting America's opioid epidemic.

The clear and compelling need for electronic tracking on packages sent to the United States through postal services has been widely documented. This includes the [bipartisan report](#) of the U.S. Senate's Permanent Investigations Subcommittee on January 24, 2018 detailing how drug traffickers exploit vulnerabilities in the international mail system and an April 28, 2019 [60 Minutes](#) documentary.

We commend CBP for recognizing the importance of these regulations pertaining to advanced electronic data (AED) as integral to preventing synthetic opioids from entering the country, taking lives, and further ravaging America's social fabric.

Specifically, we strongly concur with the following statements in the Executive Summary: "The required AED will enable CBP to better target and identify risky mail shipments and is expected to disrupt the supply chain of illegal opioids and other dangerous goods. The lack of required AED for mail shipments presents a security gap that could be exploited by bad actors because it hinders CBP's ability to effectively target for illegal opioids and other dangerous goods before they enter the commerce of the United States ... This will improve CBP's ability to detect and disrupt the flow of illicit

supply chains that exploit the postal environment and will reduce the risk that shipments of illicit fentanyl and other dangerous goods will enter the country.”

We also applaud the following language in *Section V. Statutory and Regulation Reviews* (p. 14258 of the March 15 Federal Register): “Additionally, and critically, CDC has reported an accelerating rate of overdose deaths during the COVID pandemic, with the highest number of such deaths ever recorded in a 12-month period. The CDC has found ‘an acceleration of overdose deaths during the pandemic.’ This is a testament to the imminent risk of having these types of goods enter the U.S. mail stream and thus endanger public health.”

The STOP Act’s important objectives will be more fully realized if the following changes are made within the regulations. Our comments are organized and provided under four of the categories listed in *Section I. Public Participation* (p. 14246 of the March 15, 2021 Federal Register), along with additional concerns and recommendations, as follows:

- Comments on CBP’s flexible enforcement policy
- The costs to USPS to return mail without AED
- Whether CBP should require AED on mail shipments classified as Inbound Express Mail Service (EMS) or parcel post regardless of whether these are identified as containing documents
- Whether updates to the AED should be required until the mail shipment has arrived at the first CBP port
- Additional concerns and recommendations

The Lexington Institute presents these concerns below, and we propose specific regulatory language to address some of the issues in the IFR.

CBP’s Flexible Enforcement Policy

The enforcement language in the IFR is dramatically different from the text of The STOP Act and the intent of Congress. There is little discussion about confiscating and refusing to deliver packages in the interim final regulations (IFR) and none on a large scale.

It is the clear intent of The STOP Act and two of its principal architects, Senators Rob Portman (R-OH) and Tom Carper (D-DE), that *all* packages originating from overseas must have AED to be delivered. Yet the IFR provides no indication that there will be widespread confiscation and refusal to deliver packages without AED. Packages without AED have continued to be widely delivered throughout America, and tens of millions of such packages enter the U.S. annually.

The STOP Act says: “The Postmaster General shall, in consultation with the Commissioner, *refuse any shipments* received after December 31, 2020,” that lack the requisite AED [emphasis added].

Yet, on p. 14258, under *Section G. Flexible Enforcement*, the IFR says: “In order to provide the USPS sufficient time to adjust to the new requirements and in consideration of the business process changes that *may be* necessary to achieve full compliance, CBP will show restraint in enforcing the data submission requirements of the rule, taking into account difficulties USPS may face in complying with the rule” [emphasis added]. It then states this policy will continue for 12 months.

It is especially troubling that this planned 12-month delay follows the failure to issue final regulations on October 24, 2019, as legally required by The STOP Act. The failure to promulgate any regulations until March 15, 2021, more than 16 months after the deadline, means law enforcement efforts are already lagging far behind. Any additional delays are wholly unacceptable.

At a December 10, 2020 [hearing](#) before U.S. Senate Homeland Security and Governmental Affairs Committee’s Permanent Subcommittee on Investigations, Senators were clear that they expected tough and immediate enforcement of The STOP Act. This included Senators Portman and Carper, the respective chairman and ranking member of the subcommittee, who worked closely together on the subcommittee’s January 2018 bipartisan report about opioids entering the U.S. via the international postal system from China. Both championed passage of The STOP Act.

Senator Portman [said](#): “As noted, on January 1st, the Postal Service and CBP will be required to refuse any international package without AED. This means that because deadlines weren’t met, a substantial number of packages will be turned away starting on January 1, 2021.”

Senator Carper [agreed](#): “The law is clear. As of January 1, 2021, the Postal Service must start refusing packages without Advanced Electronic Data. According to a briefing our staff received this week, this could mean 130,000 mail pieces a day, or about 4 million every month.”

Furthermore, the Universal Postal Union has made clear to its 192 member countries that they must be prepared to abide by strong U.S. enforcement of The STOP Act. In a January 22, 2021 publication, its Postal Operations Council wrote:

“If international postal items are dispatched to the US without requisite EAD after 31 December 2020, they will therefore be deemed inadmissible under the aforementioned provisions of the Convention Regulations (as well as the domestic US STOP Act legislation). Designated operators of other Union member countries are thus advised to take measures as to ensure that their international postal dispatches meet such EAD requirements in order to be accepted into the United States.”

A Need for an Emphasis on China

The IFR also fails to make a clear distinction regarding China in enforcement efforts. China is the source for the manufacture and export of most illegal fentanyl and other opioids products to America. China also accounts “for nearly three-quarters of all inbound packages” to the United States according to the Office of Inspector General of the U.S. Postal Service, in a [September 30, 2020 report](#).

As one of the world’s pre-eminent economies, China has the resources and ability to quickly install AED on all outbound shipments. Yet from various estimates 10 to 20 percent of packages sent from China to the United States still do not have AED, meaning tens of millions of such packages will continue to be delivered to Americans under the IFR.

Following the enactment of The STOP Act, China instituted AED requirements on November 8, 2018, via an announcement by its General Administration of Customs, No. 164 of 2018. U.S. businesses and others had less than three weeks to comply with the regulations and did so.

We can and should be able to expect all Chinese shippers to comply with requirements for AED. Confiscating packages without it, or refusing to accept their delivery from China Post, is the single most important action that America can take to implement The STOP Act. It will quickly spur China’s compliance with U.S. law. That should be a key focus of the CBP regulations.

Reduce Broad Country Exemptions

Another troubling component of the IFR is the number of countries that will have exemptions from AED requirements. Exhibit 7 of the IFR (p. 14268) predicts that 105 countries will provide AED information to the United States in 2021. As there are 192 countries in the Universal Postal Union, this means that 87 countries will not be providing AED on items sent to the United States.

During the December 10 hearing, the U.S. Postal Service and CBP acknowledged that exempted countries could ultimately number more than 130, and it would include developed economies like the United Kingdom.

Compounding the reasons for this are likely transshipments. China, for example, has extensive commercial and other relationships with many underdeveloped countries in Africa that do not have AED within their postal systems. This provides ample opportunity for criminal enterprises to work with nefarious intermediaries who will re-package and send items to the United States without AED.

Once we achieve full AED compliance with China, inspecting and seizing transshipments of illegal opioids will be even more important.

No countries should be granted an exemption. Existing exemptions should be closed as soon as possible and in no case last longer than 90 days. The Lexington Institute proposes the following timeframe language to replace the language in § 145.74(e) [changes bolded]:

(e) Exclusions from AED requirements for mail shipments from specific countries. Pursuant to section 343(a)(3)(K)(vi) of the Trade Act of 2002 (19 U.S.C. 1415(a)(3)(K)(vi)), CBP, in consultation with USPS, may determine that a specific country or countries do not have the capacity to collect and transmit AED, represent a low risk for mail shipments that violate relevant United States laws and regulations, and account for low volumes of mail shipments that can be effectively screened for compliance with relevant United States laws and regulations through an alternate means. In such case(s), CBP will inform USPS that mail shipments from that specific country or countries are excluded from the AED requirements in this section **for 90 calendar days from the publication date of this rule in final form in the Federal Register. After the expiration of the 90-day period, any excluded country must comply with the AED requirements in this section.**

The United States has shown strong leadership and good faith in working with the Universal Postal Union to expand AED technology. These efforts should be re-doubled. If necessary, additional financial assistance should be provided to the UPU or directly to certain countries' member postal services to install AED systems. However, these countries have had more than had 2½ years to prepare to implement the systems, any extension beyond 90 days is harmful to U.S. national interests and should not occur.

Costs to USPS to Return Mail Without AED

We agree with the thrust of the IFR that the U.S. Postal Service (USPS) should not be financially burdened with implementation of the AED program. However, it is fair and appropriate that the international customers of USPS, or their governments, should pay for related costs.

Exhibit 9 of the IFR (page 14271) shows that the total cost to all foreign post offices worldwide is just \$20 million in 2021. Exhibit 10 (pp. 14272-73) shows that the costs to CBP will be approximately \$5.6 million annually and to USPS \$5.8 million annually.

The numbers are troubling for several reasons. First, it shows that foreign posts are paying truly little of the cost to include AED information, even though there is movement among many countries, and at the Universal Postal Union, to expand the use of AED. Second, we are broadcasting to criminal enterprises that the United States is not committed to spending what it takes to better detect and seize opioids in the mail, whether sent from China or elsewhere.

Even if all the USPS and CBP funds were applied to warehousing and seizure efforts in 2021, at a total cost of approximately \$11.3 million, it would barely make a dent in the tens of millions of packages still entering the country without AED.

CBP should impose fees on all international packages coming to the U.S. These costs would be paid by the shippers, in China and elsewhere overseas. At the reasonable cost of \$1 per package, this would raise approximately \$500 million annually, which should be dedicated to fund enhanced enforcement.

Without at least the serious, credible threat to impound and refuse to deliver large amounts of packages from China and elsewhere without AED, there will be no real incentive for foreign posts to require it. Furthermore, organized criminal enterprises will simply be emboldened by the IFR, the small amount being spent, and the absence of a rigorous confiscation program.

Whether CBP Should Require AED on Mail Shipments Classified as EMS or Parcel Post Regardless of Whether These Are Identified as Containing Documents

According to the [Drug Enforcement Administration](#), fentanyl is 80 times more powerful than morphine. A few ounces can be shipped in a small envelope that the shipper, i.e., the international crime organization, claims to be documents. As such, AED information should be required on items that the shipper declares are documents.

Of note, the IFR says on p. 14255, “AED is not required for Letter class mail-documents or for items for the blind consisting of correspondence, literature in whatever format including sound recordings, and equipment or materials of any kind made or adapted to assist blind persons in overcoming the problems of blindness (up to 7 kilograms).” This is a glaring loophole that must immediately be closed.

The Lexington Institute proposes the following regulatory language to replace the current language in § 145.74(b):

(b) Inbound international mail shipments where AED is required. CBP must electronically receive AED from USPS for any inbound international mail shipment.

Whether Updates to the AED Should Be Required Until the Mail Shipment Has Arrived at the First CBP Port

We support this principle as more data enables better identification and seizure of opioids in the mail. It is important that such a practice, though, not lead to procrastination or complacency from foreign posts in excluding information at the time of initial shipment.

It is essential to both gauge the quality of AED information provided, as well as whether it is provided at all. The regulations should address steps that will be taken to identify gibberish or clearly wrong information to better identify suspicious packages. Language and translation challenges add impetus for such assessments.

The Office of Inspector General of the U.S. Postal Service was clear on the problems of error-ridden AED in a September 30, 2020 [report](#): “ In addition to the presence of AED for inbound packages, the quality and reliability of that AED also matters. Otherwise, it will be of little use to law enforcement.”

Much of the information on completed AED forms is either wrong, or incomprehensible, underscoring the need for higher quality information and continuous improvement in AED practices.

Additional Concerns and Recommendations

The IFR does not say how compliance will be monitored. This should be discussed publicly and in detail in revised regulations. Given the long delays in implementing AED regulations, it is imperative that quarterly reports be prepared with the number of packages entering the U.S. with AED, the percent searched and how often opioids and other illegal products were found. These quarterly reports should also discuss which countries are providing AED information satisfactorily and those that are of concern.

There is precedent for CBP reporting similar information. On October 30, 2020 [CBP announced](#), in conjunction with a Memorandum of Understanding signed with the U.S. Food and Drug Administration (FDA), that in fiscal year 2020 27,500 mail parcels containing 43,000 FDA-regulated products were screened. Of these, 34,000, or 79.6 percent of the 43,000 products screened, were refused admission with 24,000 of the products destroyed.

The high percent of illegal products underscores the need for a rigorous AED program and strong enforcement of The STOP Act.

We suggest the following language in addition to the interim rule’s current provisions:

§ 145.76 Compliance Reporting Requirements

- (a) CBP shall collect information and publish a quarterly report that tracks CBP and USPS progress in upholding these regulations. CBP shall include the following information:
 - (1) The total volume of inbound international mail packages received by USPS;
 - (2) The total volume of inbound international mail packages received by USPS with AED;

- (3) The total number of packages requested by CBP to confirm USPS compliance;
 - (4) The results of CBP compliance requests;
 - (5) The number of packages received from AED-exempted countries; and
 - (6) EMS package counts and related fees;
- (b) CBP shall require the Postal Service to count each inbound mail item, rather than relying on numbers from foreign posts.
- (c) CBP shall publish a report containing the above information every quarter of the calendar year.

Thank you for your attention to these matters.

Respectfully,

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